

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**
The Honorable A. Bruce Campbell

In re:)	
)	
SHARON EPPERSON)	Case No. 03-32027 ABC
)	Chapter 7
Debtor.)	
_____)	

ORDER HOLDING IN ABEYANCE CLAIM TO EXEMPTION AND OBJECTIONS

THIS MATTER is before the Court on the objections of (a) Government Employees Insurance Company (“GEICO”) and (b) the Chapter 7 Trustee, Glen R. Anstine (“Trustee”), to the exemption claimed by Sharon Epperson (the “Debtor”) under C.R.S. § 13-54-102(1)(n) for “damages for personal injuries.” The Court has jurisdiction over this core matter pursuant to 28 U.S.C. §§ 1334(a) and (b) and 28 U.S.C. §§ 157(a), (b)(1) and (b)(2)(B).

The contested exemption concerns claims the Debtor has asserted in Colorado state court against GEICO for damages arising from GEICO’s alleged wrongful refusal to honor obligations to the Debtor under an automobile personal injury protection insurance contract. When the Debtor filed this Chapter 7 in November 2003, she neither scheduled this claim against GEICO, nor did she claim it as exempt. The claim was asserted in state court in January 2004, two months after the filing of this bankruptcy. The Debtor received a discharge in February 2004. This claim was scheduled and claimed as exempt by amendments to Schedules B and C only after GEICO objected to the Debtor’s standing to assert these claims in the state court action.¹ GEICO filed an objection to the Debtor’s claimed exemption, and the Trustee timely joined in that objection.² The objection argues that the Debtor’s bad faith breach of contract claim against GEICO does not come within Colorado’s exemption for “damages for personal injury.” The Debtor counters that GEICO, as a noncreditor, is without standing to object to her claimed objection. At the conclusion of a non-evidentiary hearing on GEICO’s and the Trustee’s objections, the Court asked for briefs on the scope and meaning of “damages for personal injury” as it relates to an alleged bad faith breach of contract and on GEICO’s standing to object to the subject claimed exemption.

¹GEICO argues that the exemption sought by the Debtor should be denied due to the Debtor’s tardiness in scheduling this “asset” and claiming it as exempt. To date, the Trustee has not challenged the Debtor’s discharge, nor is there any other indication that Debtor’s timing in claiming this exemption was intended to secret assets or mislead creditors.

²Under Bankruptcy Rule 4003, an objection to a claim of exemption is timely filed within thirty (30) days of any amendment to Schedule C.

DISCUSSION

A. Standing

The standing issue is easily disposed of. GEICO claims to have standing as a creditor based on payments it made for Debtor's medical expenses for which it now seeks repayment because the payments were not required under its policy with the Debtor. The Court need not resolve this question. The Trustee's joinder in GEICO's objection to exemption was timely, and the Trustee's standing is unassailable.

B. Scope of § 13-54-102(1)(n) "Damages for Personal Injury"

For purposes of applying the Colorado exemption statute, this Court has found that "an injury is personal when it impairs the well-being or the mental or physical health of the victim." *In re Keyworth*, 47 B.R. 966, 973 (Bankr. D. Colo. 1985). Any doubt as to whether a claim in Colorado against an insurer for willful and wanton breach of contract may involve damages for personal injury was recently put to rest by the Colorado Supreme Court. *Giampapa v. American Family Mut. Ins. Co.*, 64 P.3d 220 (Colo. 2003). There the majority opinion holds,

[I]n Colorado. . . a complete range of non-economic damages is available when an insurer has willfully and wantonly breached its contract with an insured, so long as the damages are foreseeable at the time of contracting and the damages are the natural and probable result of the breach.

64 P.3d at 238.

In explaining the meaning of a "complete range of non-economic damages" the Colorado Supreme Court includes injuries that arise from, *inter alia*, physical pain, physical stress, mental anguish, emotional distress, humiliation, embarrassment, inconvenience and loss of ability to enjoy life. *Id* at 241-42.

Whether the Debtor's claims against GEICO are with or without merit is best determined in the pending state court litigation.³ To the extent those claims have merit, that forum is also best suited to determine whether the damages involve harm to the mental or physical well-being of this Debtor. To the extent these claims do not involve such personal injury, they do, in fact, belong to the Trustee and the bankruptcy estate of this Debtor. It is the Trustee's duty to evaluate the claims and determine whether to abandon them to the Debtor as burdensome to the bankruptcy estate or,

³A bankruptcy judge could not adjudicate this claim for two reasons: the referral of bankruptcy cases from the United States District Courts to the bankruptcy judges in this district excludes both trial of personal injury claims (28 U.S.C. § 157(b)(5)) and jury trials (28 U.S.C. § 157(e)).

alternatively, to pursue them. If he chooses the latter course, he may seek to intervene in state court litigation as to the portion of the claims that are not for damages for personal injuries.

CONCLUSION

The Debtor's claim of exemption for damages that may be recovered against GEICO in the pending litigation in state court and the objections thereto shall be held in abeyance until a determination in state court of the nature of any recoverable damages, as "damages for personal injury," in such litigation. If there is a determination of liability in the pending state court litigation, and if any issue remains as to the extent the award is exempt for personal injuries in favor of the Debtor and the extent it is for non-exempt non-personal injury in favor of the Trustee, any party in interest may petition the Bankruptcy Court at that time for further consideration of the Debtor's claimed exemption and pending objections thereto.

DATED:

BY THE COURT:

A. Bruce Campbell
United States Bankruptcy Judge